It is supposed that the cases of *McElhenny's Administrators* v. *The Hubert Oil Co.* and *Simons* v. *The Vulcan Oil Co.*, before referred to, ought to rule this cause. But an examination of the opinions in those cases will show that the facts upon which they were decided were entirely different from those which appear on this record. The defendants there were subscribers to the stock; they became purchasers of the property after the project of a company was started, and, moreover, falsely represented that they had purchased it at the same price at which they sold.

These facts, which were the grounds upon which those determinations were based, are not, as we have seen, the facts of this case. It is not pretended that any false representation was made by any of these defendants in the sale of the stock. Some other points have been raised, which are, however, sufficiently disposed of in the opinion below.

Decree affirmed and appeal dismissed at the costs of the appellants.

District Court of the City of Philadelphia.

COX *v.* THE FARMERS' MARKET COMPANY.

The owner of property is not liable to a trespasser, or one who comes on it by mere sufferance, for negligence, even though the act complained of would be a nuisance in a public highway.

It is the duty of every person to take care of his own safety, and one who ventures along a private passage-way at night, does so at his own risk.

Between two market-houses there was a space of thirty feet wide running from one street to another. The space was paved both as a foot and cartway, and formed an open passage-way from street to street, which the public were in the habit of using, though both it and the market-houses were private property. *Held*, that the passage was not a public highway.

The purpose of the company in leaving open and paving the space being plainly to accommodate customers resorting to the market-houses, its acquiescence in the general use of the passage-way by the public was not a dedication to public use.

A person going along this passage-way at night, after market hours, fell down the steps of a basement opening on the passage-way. *Held*, that the company were not liable for his injuries.

The plaintiff sued in case, claiming damages for injury received from falling down a flight of steps leading into an apartment, under the market-house, designed for a restaurant.

There are two large market-houses on the north side of Market street, between Eleventh and Twelfth streets. The eastern one is the property of the defendants. The two houses are separated by a space of thirty feet in width, leading from Market to Filbert street. This space is used for the convenience of persons who attend the markets as buyers and sellers. The whole of the space constitutes a *passage* between Market and Filbert streets. About four feet wide, on each side of this passage, is paved with brick to a curb of stone, having posts set at intervals throughout the entire distance between these streets. The rest of the passage is paved with flag-stones, and is connected with Market street by a *railway* running northwardly about one hundred feet. This railway is used for bringing produce to the two markets.

The restaurant is situated about forty feet north of Market street, and borders on the thirty feet wide passage. It is guarded by strong iron railing, except at the entrance or doorway to the steps down which the plaintiff fell. On the evening of September 27, 1868, the plaintiff, in company with two others, came out of the market-house, intending to go to some place of amusement. They had crossed the passage when the plaintiff, saying he had some business up the passage, left his companions. After an absence of five minutes he returned to them, holding his hand on his mouth, and said something about his watch and his hat. He then conducted his companions to the entrance to the flight of steps spoken of leading to the restaurant. One of his companions testified that he groped his way down some ten or twelve steps, and there found the plaintiff's watch and hat. The place was quite dark; there was no lamp there.

The declaration set forth that the defendants were the possessors and occupiers of a certain messuage near a certain common and public highway; that the plaintiff was passing in and along said highway, and then and there unavoidably fell into a *hole* or area opening into a certain basement, &c.

The plaintiff's evidence having been received, a non-suit was ordered, and this was a motion to take it off.

STROUD, J.—The plaintiff, although he might have been a witness, did not offer himself for that purpose, and there is not, in fact, any direct evidence as to the place at which he fell. But there is no difficulty made as to this defect. The broad question is, whether, on the facts, there is any responsibility, on the part of the defendants, for the injury suffered by the plaintiff? Can the thirty feet wide passage be regarded as a *public highway*, as it is laid to be in the declaration? If it belonged to the market company, and the area into which the plaintiff fell was on the property of the defendants, the plaintiff can recover nothing. The evidence shows it to be private property, property of the defendants. It was bought and devoted entirely to the use of the company. The railway indicates that it was specially intended for market purposes. The railway does not run from Market to Filbert street, but stops at the distance of one hundred feet from its entrance on Market street.

The plaintiff's counsel has referred to several decisions of different courts, as sustaining his position, that the passage in question falls within the description of a public highway. The only one of these which bears upon the point is *Bush* v. *Johnston*, 23 P. S. R., 209. It was there held that where the public for *above thirty years* had been permitted to occupy, as a sidewalk, a portion of ground, in a village, in front of a private building, the owner might be considered to have dedicated the sidewalks to the use of the public.

There is no reason to find fault with this decision. But what resemblance is there in it to the present case? There is a case, *Gowen* v. *The Exchange Company*, 5 W. & S., 141, which does resemble and decide it as respects the *public* highway. *Gowen* v. *The Exchange Company* was tried before me, many years ago, and the course pursued by me then was adopted in the present action. The plaintiff's evidence was received, and a *non-suit* then ordered. *The Supreme Court refused to take off the non-suit.* The unanimous opinion of the court was delivered by Chief Justice GIBSON. It appears by the report, that the plot of ground bounded by Dock, Walnut and Third streets,

with the exception of a triangular lot on which stood a house belonging to the plaintiff, was purchased by the Exchange Company, who erected a large building upon it. The front of the Exchange building, on Dock street, was thrown back, and spaces of their lot in front were left, which were paved with flag-stones and used by passengers for footways. One of these was between the plaintiff's house and the Exchange building, and led to the Post Office, which fronted on Dock street and this pavement. After the erection of the Exchange the plaintiff improved his eastern front and placed a door there. Afterwards the Exchange Company built a wall which closed up this door, and was carried as high as the cornice of the plaintiff's house.

The plaintiff brought suit, contending that the paved spaces and passages were dedicated to public use as a highway, and that he had, therefore, a right of passage along them into and from his house.

In the course of the opinion, the Chief Justice alluded to the Masonic Hall on Chestnut street (in which the Supreme Court happened to be then sitting), saying "its apartments are let for balls, concerts, lectures, auctions, exhibitions and other purposes, which require that it be a place of public resort to make it profitable. In front of it is a quadrangular court the breadth of the building, and of the depth of forty-five feet, with a semicircular carriage-way from the street to the principal entrance and out again; the rest of the space is paved, and the whole is used by passengers as a part of the public footway. Yet no one imagines that the proprietors might not put a stop to the public use by putting a building in front."

There are numerous other places in this city which are largely in use by the public with carriages and horses and men on foot, yet no one supposes that this permission by the proprietors makes them liable for a local occurrence there in which they have had no special agency. The landing at the foot of Walnut street wharf, on the Delaware river, belonging to the Camden and Amboy Railway Company, is a place of this description. The Eastern Market Company, on Fifth street, may be cited as following within a similar description.

Gillis v. *The Pennsylvania Railroad Company*, 8 Am. Law Reg., N. S., 729, furnishes a strong authority for the defendants in the case in hand. The platform of the railroad company at Johnstown, having given way under an immense pressure of persons drawn there for the purpose of seeing the President, who was in the cars, it was held that the company were not liable for damages for bodily injuries sustained by such persons from its fall. Judge SHARSWOOD begins the opinion of the court: "The platform of a railway company, at its station or stopping place, is in no sense a *public* highway." Several decisions of the English courts are referred to in this opinion. It is not necessary to repeat them. The note to this case, by one of the editors of the American Law Register, gives several English cases which furnish a valuable illustration of the law on the general subject. These need not be more particularly noticed. There is, however, a case of recent date in England, which meets the argument of the counsel of the plaintiff urged before us, that the thirty feet passage between the market-houses might, from the nature of its use, be properly denominated a *public* highway.

The case arose in this manner: By statute 1 and 2 of W. IV., "every carriage, with two or more wheels, standing or plying for hire in any *public street or road*, at any place within five miles from the General Post Office in London, shall be deemed to be a *hackney carriage*." And other statutes require a *hackney carriage-driver*, unless he have a reasonable excuse, to drive to any place not more than six miles from the place where he is hired, to which the hirer may order him to drive; and a *penalty is imposed on him for his refusal.* In *Case* v. *Storey*, Law Reports, 4 Exch., 399, it appeared that the appellant went to the Great Northern Railway station, within which, in a rank of cabs by the side of the arrival platform, was the respondent's cab. The respondent had been admitted into the station with his cab by the railway company, for the purpose of accommodating passengers arriving by their trains. The station is the private property of the company.

The appellant, who had not, on the occasion in question, been a passenger on any train, required the respondent, whom he

found standing on the arrival platform near the cab, to drive him to Camden Town (a place less than six miles off), but upon learning that the appellant had not arrived by train, the respondent declined to drive him. This was the offence complained of.

On the part of the appellant, it was contended that the respondent was bound to drive him, and on refusing made himself liable to the penalty of the statutes. On the other hand the respondent urged that the Great Northern Railway station was *private* property, and that he and other cabmen who entered the station to take passengers, were either hired by the company, or, at all events, *were on private ground,* under the company's license, *and not in any street* or place within the meaning of the statute. A magistrate, before whom the respondent had been summoned, was of opinion with the respondent, and dismissed the summons. There was an appeal from the magistrate's judgment. The question for the court, on this appeal, was, whether the decision was right? The Court of Exchequer sustained the decision of the magistrate. KELLY, C. B., said, in the course of his opinion: "It is clear to me that railway stations are not either *public streets* or public roads. They are private property, and although, it is true, they are places of public *resort, that* does not, of itself, make them public places. The public only resort there upon railway business, and the railway company might exclude them at any moment they liked, except when a train was actually arriving or departing. For the purpose of carrying on their business they must necessarily open their premises, which are nevertheless *private,* and in no manner capable of being described as public streets or roads."

The plaintiff offered no explanation of his purpose in going on the defendant's premises. The night was dark and the market hours over. In such a state of things it was great rashness to venture as he did. It was at his own risk. In *Wilkerson* v. *Fairlie,* 1 Hurlstone & Coltman, 633, a carman was sent by his employer to the defendant's warehouse to fetch some goods. He was directed by a servant of the defendant to go along a passage to a counting-house; where he would find the warehouseman. The passage was dark, and in going along it

he fell down a *staircase* and was much hurt. The plaintiff was *non-suited,* the judge being of opinion, if he could see his way, the accident was the result of his own negligence; if he could not see his way he ought not to have proceeded without a light. The Court of Exchequer held that the defendants were not responsible, inasmuch as there was no obligation on them to light the passage or fence the staircase. In general it is the duty of every person to take care of his own safety, and not to walk along a dark passage without a light to disclose to him any danger.

This decision supplements the only view of the facts shown by the evidence which were not disposed of by *Gowen* v. *The Exchange Company, Gillis* v. *The Railway,* and *Case* v. *Storey.*

Motion dismissed.

Supreme Court of the United States.

SAMUEL B. PAUL *v.* COMMONWEALTH OF VIRGINIA.

Corporations are not citizens within the meaning of the Constitution of the United States, though the courts of the United States, for the purpose of sustaining jurisdiction, have conclusively presumed that a corporation chartered by a state is composed of citizens of that state.

The privileges intended by the provision of the constitution, declaring that citizens of each state shall be entitled to all the privileges of citizens in the several states, are those which are common to the citizens of the several states, under their constitutions and laws, by virtue of their being citizens. Special privileges enjoyed by citizens in their own state are not secured in other states by it.

A law of Virginia, compelling corporations chartered by other states to give security and procure a license before doing business in Virginia, is constitutional, not being in violation of the clause giving citizens of each state the privileges of citizens of the several states, nor of the clause giving Congress power to regulate commerce.

The issuing of a policy of insurance is not a transaction of commerce, even though the parties be domiciled in different states; it is a simple contract of indemnity against loss.

In error to the Supreme Court of Appeals of the State of Virginia.